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Senate

By Mr. TSONGAS (for himself and Mr. KENNEDY):

S. 1323. A bill to amend the Internal Revenue Code of 1954 with respect to the residential energy and investment tax energy credits, and for other purposes; to the Committee on Finance.

COMMERCIAL AND MULTIFAMILY ENERGY TAX CREDIT ACT

Mr. TSONGAS. Mr. President, today I am introducing legislation to broaden and improve the energy tax credits provided by the Internal Revenue Code. Energy tax credits provide a simple and effective mechanism to encourage investment in conservation. They depend upon consumers' decisions in the marketplace rather than a Federal bureaucracy. They are an accepted part of the administration's energy policy.

Unfortunately, there are problems with the existing energy tax credits. The credits exclude important segments of our economy. Some expire next year and others have a reduced effect due to inflation. These weaknesses help keep America from getting the optimal amount of energy conservation—which our economy and security require. The Commercial and Multifamily Energy Tax Credit Act of 1981 addresses these problems.

The current statute on energy tax credits for businesses is too limited. It covers complex investments which have specific industrial applications, such as cogeneration equipment, combustible gas recovery systems, and modifications to alumina electrolytic cells. In addition, the IRS has, through regulations, restricted credits on the few listed properties that commercial facilities can use—such as automatic energy control systems—to industrial applications. The legislation I am introducting today will end these regulatory limits. It will also make commercial facilities eligible to receive tax credits for insulation, storm windows, and other useful energy conservation investments. Further, it would increase the credit to 20 percent.

The existing residential energy tax credits exclude owners of rental housing. At present, neither the renter nor the rental property owner has an effective incentive to invest in energy efficiency. The average renter does not stay long enough to consider the investment warranted. The landlord often finds he can pass along most or all of the energy costs to renters. Because of their ownership interest, landlords are the most likely party to invest in energy conservation. Therefore, this bill extends the residential energy tax credits to them.

Both of these changes are vital to the energy security of our Nation and the welfare of our citizens. In 1977 the commercial sector used 10 quads of energy; rental housing used another five quads. Combined, this is 20 percent of our Nation's total energy demand—roughly 7.5 million barrels of oil equivalent per day. With cost-effective investments in energy conservation improvements, half of this energy could be saved. This represents two-thirds of all the oil we now import. Yet because of regulatory restrictions and exclusions in the existing tax credits, this potential is virtually untapped today.

In the New England States, the need for energy conservation improvements in commercial establishments and rental housing is particularly acute.

As a percentage of total energy used, the commercial sector in Massachusetts is 2½ times larger than that of the Nation as a whole. The percentage used in Massachusetts residences is almost two times larger than the national average. Further, in Massachusetts 40 percent of the residences are rental units.

For the New England States overall, 25 percent of the housing stock is multifamily. Of these, 60 percent were built before 1940 with little regard for energy efficiency.

In 1978, imported oil accounted for 74 percent of New England's energy compared to 20 percent nationwide. This represented a $16 billion cash outflow to foreign producers from New England.

The rising costs of energy demands that we remove the IRS regulatory barriers to energy conservation in these sectors of our economy. We cannot afford not to.

As time passes, inflation and expiration dates threaten the energy tax credits. The Commercial and Multifamily Energy Tax Credit Act moves the termination date of the business energy tax credit from December 31, 1982, to December 31, 1985. It also adjusts the expenditure limits on the residential credits to compensate for inflation since the credits began in 1978. These changes will help maintain the effectiveness of the energy tax credits.

This bill is consistent with other bills filed in this area, such as Senator WALLOP's Industrial Energy Security Tax Credit Act (S. 750), Senator KENNEDY's Energy Productivity Act of 1981, (S. 787), and Senator DURENBURGER's Commercial Business Energy Tax Credit Act (S. 1288). I hope that the Finance Committee will hold hearings on these bills and on the issue of energy conservation tax credits for the industrial, commercial, and multifamily sectors.

Mr. President, I believe the committee will find that there is a clear need for such legislation. Modest economic incentives through the tax code can help insure that the investment that this Nation so desperately needs is done in an efficient and resource-conserving manner.

Mr. President, I ask unanimous consent that the full text of the Commercial and Multifamily Energy Tax Credit Act and a summary of its provisions be printed in the RECORD.

There being no objection, the bill and the summary were ordered to be printed in the RECORD, as follows:

S. 1323

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial and Multifamily Energy Tax Credit Act".

SEC. 2. DEFINITION OF SPECIALLY DEFINED ENERGY PROPERTY.

(a) HOTELS, OFFICE BUILDINGS, RETAIL AND WHOLESALE TRADE FACILITIES, AND OTHER FACILITIES INCLUDED.—Paragraph (5) of section 48(l) of the Internal Revenue Code of 1954 (defining specially defined energy property) is amended by adding at the end thereof the following new sentence: "In the case of any property installed in connection with any commercial facility (including a hotel, office building, educational facility, health care facility, or retail or wholesale trade facility), any reduction of the amount of energy consumed in connection with such facility shall be treated as a reduction of energy consumed in a commercial process.".

(b) ADDITIONAL ITEMS.—Paragraph (5) of section 48(l) of such Code is amended by striking out "or" at the end of subparagraph (L), by redesignating subparagraph (M) as subparagraph (V), and by inserting after subparagraph (I) the following new subparagraphs:

"(M) insulating material or coating installed in connection with a building, pipe, duct, container, or window,

"(N) a storm or thermal window or door for the exterior of a building, a second entry door, or a revolving door,

"(O) caulking or weatherstripping of an exterior door or window,

"(P) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(Q) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

"(R) an electrical or mechanical furnace ignition system which replaces a gas pilot light,

"(S) an electrostatic precipitator, a charcoal filter, or any other air cleaner,

'(T) an automatic energy saving setback thermostat,

"(U) replacement or modification of heating distribution, cooling, ventilating, or lighting systems which increase their energy efficiency, or"

(c) The table contained in clause (i) of section 46(a)(2)(C) of such Code is amended by inserting after the last item the following new item:

"VII. SPECIALLY DEFINED ENERGY PROPERTY.—Property described in section 48(1)(5)—20 percent—June 30, 1981—December 31, 1985."

(d) EFFECTIVE DATES.—

(1) The amendment made by subsections (b) and (c) shall take effect as if included in the amendments made by section 301(b) of the Energy Tax Act of 1978.

(2) The amendments made by subsection (b) shall apply to periods after June 30, 1981, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954.

SEC. 3. EXTENSION OF RESIDENTIAL ENERGY CREDIT TO LESSORS.

(a) IN GENERAL.—Section 44C(d) of the Internal Revenue Code of 1954 (relating to special rules) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraphs:

"(5) EXPENDITURES BY LESSORS.—

"(A) LESSORS.—Notwithstanding any provision of this section requiring the taxpayer to use a dwelling unit as a residence, if any taxpayer who is the lessor of a dwelling unit makes expenditures which, but for such provision, constitute energy conservation or renewable energy source expenditures, then, for purposes of this section, the lessor shall be treated as having made energy conservation or renewable energy source expenditures in connection with such dwelling unit.

"(B) AMOUNT OF CREDIT.—The amount of the credit allowed under subsection (a) in the case of a lessor shall be the amount otherwise determined under this section, except that in any case in which the depreciation allowance under section 167 (or amortization in lieu of depreciation) is allowed as a deduction with respect to the dwelling unit, subsection (b) shall be applied—

"(i) by substituting '10 percent' for '15 percent' in paragraph (1), and

"(ii) by substituting '30 percent' for '40 percent' in paragraph (2).

"(C) WHEN EXPENDITURE MADE.—An expenditure with respect to an item shall be treated as made when the original installation of such item is completed.

"(D) COORDINATION WITH OTHER PROVISIONS.—No credit or deduction shall be allowed under any other provision of this chapter with respect to any amount for which a credit has been allowed under subsection (a).".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 44C of such Code (relating to general rule) is amended by striking out "In the case of an individual, there" and inserting in lieu thereof "There".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures made after June 20, 1981 in taxable years ending after such date.

SEC. 4. AMOUNT OF RESIDENTIAL ENERGY CREDIT.

(a) IN GENERAL.—Subsection (b) of section 44C of the Internal Revenue Code of 1954 (defining qualifying expenditures) is amended—

(1) by striking out "$2,000" in paragraph (1) and inserting in lieu thereof "$3,000," and

(2) by striking out "$10,000" in paragraph (2) and inserting in lieu thereof "$15,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after June 30, 1981.

SEC. 5. PERIOD TO WHICH ENERGY INVESTMENT CREDIT APPLIES.

Subclause (I) of section 46(a)(2)(C)(i) of the Internal Revenue Code of 1954 (relating to energy percentage) is amended by striking out "1982" and inserting in lieu thereof "1985".

BRIEF SUMMARY OF PROVISIONS

Section 2. Energy tax credits for commercial facilities.—Makes commercial properties eligible for energy conservation investments that the tax code lists in "Specially Defined Energy Property," such as automatic energy control systems. It also adds additional properties to the list of Specially Defined Energy Property. These properties include: materials to insulate buildings, pipes and containers, storm windows, weatherstripping, and changes in heating, cooling, ventilating, and lighting systems to improve energy efficiency. Finally, it increases the credit to 20 percent.

Section 3. Extension of residential credits to owners of rental housing.—Extends both the energy conservation and renewable energy tax credits to owners of rental residences. This section is similar to a provision which was approved by the Senate as part of the Windfall Profit Tax Bill. The Conference Committee deleted that provision of the Senate bill.

Section 4. Adjustment of residential energy tax credit limits for inflation.—Adjusts the limits on expenditures covered by the residential energy credit upward by 50 percent to compensate for inflation. Since the changes this section would make will remain in effect until the credit's termination date on December 31, 1985, a 50 percent increase will help maintain the effect intended in the enactment of the credit on 1978. (The CPI from January 1, 1978 to this bill's enactment date will total approximately 47 percent.)

Section 5. Extension of the time period for business tax credits.—Extends all the energy tax credits for business to December 31, 1985, the same expiration date that applies to residential credits. Under present law, most of the business energy tax credits expire on December 31, 1982.

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SECTION 2—INCLUSION OF THE COMMERCIAL SECTOR AND OF TECHNOLOGICALLY SIMPLE PROPERTIES WITHIN THE BUSINESS ENERGY TAX CREDIT

Section 2 of the bill clarifies the definition of the "Specially Defined Energy Property" so that it specifically includes conservation investments in commercial facilities. The bill applies this change retroactively to the 1978 origin of the credit. Section 2 also adds several types of property within the category of "Specially Defined Energy Property" so that businesses can receive tax credits for investments in less technologically complex devices than those already listed (e.g. materials to insulate buildings, pipes, and containers; storm windows). The addition of these properties applies prospectively starting July 1, 1981. Finally, section 2 increases the credit to 20 percent.

The changes would retroactively provide commercial facilities with credits for expenditures on property presently listed within the category of "Specially Defined Energy Property." One such property, automatic energy control systems, many commercial facilities can use. The bill would also prospectively provide both commercial and industrial facilities with credits for the smaller, less complex items that the bill adds to the "Specially Defined Energy Property" category.

The retroactive aspect of the change of the Specially Defined Energy Property statute would normally create tax administration problems. However, since IRS just issued final regulations for this credit on January 23, 1981, few taxpayers would have intentionally not taken the credit in reliance on the regulations. Instead, most have probably taken the credit and face a deficiency. In addition, since the amendment clarifies rather than changes the intent of the statute the amendment should apply to the life of the statute.

SECTION 3—EXTENTION OF RESIDENTIAL CREDITS TO LANDLORDS

Section 3 of this bill allows landlords to use both the 15 percent energy conservation and 40 percent renewable energy residential credits for expenditures on rental residences. For residences upon which landlords deduct depreciation, the level of the tax credit is lower. This section copies a provision of the 96th Congress' S. 3919, the Senate version of The Windfall Profits Tax Bill. The Conference Committee deleted that provision.

SECTION 4—ADJUSTMENT OF RESIDENTIAL CREDIT LIMITS FOR INFLATION

Section 4 adjusts the limits on expenditures covered by the residential energy credit upward by 50 percent to compensate for inflation. The section raises the expenditures amount covered by the Energy Conservation Credit from $2,000 to $3,000 and raises the expenditure amount covered by the Renewable Energy Source Credit from $10,000 to $15,000.

The expenditure limits presently in the code came from the Energy Tax Act of 1978 and apply to expenditures made after April 20, 1977. Using the Consumer Price Index, inflation from January, 1978, to June 30, 1981, was 47.1 percent.[1] Using the more conservative GNP Deflator, inflation from January, 1978, to June 30, 1981, was 33 percent.[2] Since the changes the bill would make will presumably remain effective until the credit's termination date on December 31, 1985, a 50 percent increase seems appropriate to maintain the effect intended in enactment of the credit in 1978.

SECTION 5—EXTENSION OF TIME PERIOD FOR BUSINESS TAX CREDITS

Section 5 extends all the energy credits for businesses to December 31, 1985. Under present law, most of the business energy tax credits expire on December 31, 1982.